## Waiver of Federal Housing Administration Regulations at 24 CFR 203.41(a)(3)

Pursuant to section 7(q) of the Department of Housing and Urban Development Act (42 USC 3535(q)) and 24 CFR section 5.110, I hereby make the following Findings and Determinations and find good cause to waive a portion of Federal Housing Administration (FHA) regulations at 24 CFR section 203.41.

## **FINDINGS**

- 1. Prior to enactment of the Housing and Economic Recovery Act of 2008 (HERA), FHA was authorized to insure mortgage loans on condominium units pursuant to National Housing Act (NHA) section 234. The pertinent regulations were located at 24 CFR part 234. HERA amended the NHA to provide FHA the legal authority to insure mortgage loans for the purchase of condominiums units under NHA section 203. In turn, the requirements in FHA regulations at 24 CFR part 203 currently apply to mortgage loans for the purchase of condominium units.
- 2. FHA regulations at section 203.41(b) state, in part, that a "[m]ortgage shall not be eligible for FHA insurance if the mortgaged property is subject to legal restrictions on conveyance..."
- 3. Section 203.41(a)(3) defines the term "legal restrictions on conveyance," in part, as "[a]ny legal instrument, law or regulation in any legal instrument, law or regulation applicable to the mortgagor or the mortgaged property, including but not limited to a lease, deed, sales contract, declaration of covenants, declaration of condominium ... that attempts to cause a conveyance (including a lease) made by the mortgagor to ... be void or voidable by a third party ... [or] be subject to the consent of the third party."
- 4. Prior to HERA, however, FHA regulations at 24 CFR part 234 and policy guidance pertaining to the insurance of mortgages on condominium units did allow for certain legal restrictions on conveyance, specifically, leasing restrictions in the condominium documents. As noted, FHA regulations at 24 CFR 203.41 prohibit FHA from insuring a mortgage loan used to purchase a condominium unit if the condominium documents or any other pertinent condominium documents include leasing restrictions. In addition, the restrictions on conveyance in the condominium documents require that FHA not grant project approval to the condominium project, because the documents do not comport with all applicable FHA requirements.
- 5. Condominium documents typically include restrictions regarding the leasing of condominium units by their owners. It is not uncommon for condominium documents to state, in part, that a unit owner shall not lease his or her unit for a term of less than six (6) months, and under no circumstances will the condominium unit be used for hotel or transient purposes. Homeowners' Associations typically elect to have leasing restrictions to improve the marketability and stability of the whole condominium project.

- 6. A waiver of that part of the definition at section 203.41(a)(3) that relates to a lease should be waived to prevent the delay in issuing new condominium project approvals and recertification of those condominium projects previously approved by FHA prior to enactment of HERA section 2117. In addition, the waiver will allow FHA to insure mortgage loans used to purchase condominium units within condominium projects with leasing restrictions.
- 7. A waiver of that part of the definition at section 203.41(a)(3) that relates to a lease will bring FHA insurance condominium eligibility criteria in-line with modern real estate and lending industry practices.

## **DETERMINATIONS**

- 1. That part of the definition at 203.41(a)(3) that relates to a lease is waived for one (1) year to ensure proper governance of a condominium project by protecting against transient tenants and real estate speculators, both of which could have a negative impact on the market value of the units in the project. This waiver will benefit both the condominium project and unit owners, and, in turn, reduce the risks to the FHA insurance fund.
- 2. This waiver will allow for FHA-insured financing to be used to purchase or refinance a condominium unit in a condominium project where the project's declaration of covenants, declaration of condominium, master deed, bylaws, or other pertinent documents contain provisions which restrict a unit owner's ability to lease their unit. The following types of restrictions have been seen when reviewing various legal documents and will be covered by this waiver.
  - All leases must be in writing and subject to the declaration and by-laws of the condominium project.
  - The condominium association may request and receive a copy of the sublease or rental agreement.
  - The condominium association may not require that a prospective tenant be approved by the condominium association and/or its agent(s), including but not limited to meeting creditworthy standards.
  - The condominium association may request the name(s) of all tenants including the tenants' family members who will occupy the unit.
  - Unit owners are prohibited from leasing their units for an initial term of less than 30 days.
  - The condominium association may establish a maximum allowable lease term, e.g. six months, twelve months, etc.
  - The condominium association may establish a maximum number of rental units within the project; however, the percentage of rental units may not exceed the current FHA condominium project owner-occupancy requirement.
- 3. All other FHA requirements and policy guidance addressing restrictions on conveyance remain in effect.

- 4. This waiver does not violate a statutory requirement.
- 5. The above findings and determinations constitute good cause for the waiver, as required by 24 CFR section 5.110. Granting of this waiver will ensure that the mission of HUD to build strong, safe and healthy communities for all continues to move forward with the vision of improving lives and strengthening communities. If FHA determines that this waiver does not forward the Department's goals, FHA may, at its discretion, withdraw this waiver immediately.

## **WAIVER**

The definition of the term "legal restrictions on conveyance" at 24 CFR section 203.41(a)(3) regarding lease restrictions in FHA-approved condominium projects is hereby partially waived to allow condominium projects to receive FHA approval even though the condominium project may restrict leasing of units by units owners.

This waiver is effective from the date of issuance.

David H. Stevens
Assistant Secretary for HousingFederal Housing Commissioner

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